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REMARKS

Amendments to the specification are presented for pages 13 and 63 of the application as directed by the Examiner. Upon review of the pages, it appears that the text was accurate but do to copying inconsistencies may not have been readily understood. As such, the amendment corrects the errors as the Examiner identified them. With respect to page 63, a comma is used instead of a period, thus no capitalization is required. The specification has been amended at page 65 to correct spelling and grammatical errors.

Claims 1-2, 4-5, 7-8, and 10-12 are active in the application. Claims 3, 6, and 9 have been canceled. Claims 1, 2, 5, 8, and 11 have been amended to require that a user specified privacy level is used to determine whether the program guide is distributed. Specifically, claims 1, 2, 5, and 8 have been amended to include the features of claims 3, 6 and 9. Similar features requiring user-specified privacy levels and determinations based on the privacy level have been added to claims 11 and 12.

Claims 5 and 8 have been amended to correct informalities as requested in the Office Action.

Claims 11 and 12 have been amended as requested in the Office Action so that they are directed toward statutory subject matter.

The present invention, as set forth in the amended claims, provides a program guide that allows a user to specify a desired level of privacy protection. This aspect of the present invention is described on pages 64-66. Specifically, as described in reference to an exemplary embodiment on page 64-66, the user may select one of three levels of privacy protection. A first, lowest level of privacy protection allows the program guide server to detect, document and store program choices and other information about the user. This information may be used for targeted advertising, for example. A second level of privacy protection restricts program condition data, but allows the program guide server to operate the instruction data. A third option restricts information, and also requires that the users terminal apparatus perform all functions relating to the program guide (i.e., so that the server does not process information relating to the user's program

choices or programming decisions). Page 65 discusses having different charges for these different types of privacy levels.

Claims 1, 2, 5, 8, and 11, as amended, require that the program server "determines whether or not an electronic program guide should be distributed...based on a privacy level...". Hence, the distribution of the program guide is dependent on the privacy level desired by the user. In the present invention, therefore, the user is in control of the privacy setting and can decide if information about desired programs can be made available to the server. The server determines pricing and availability of the program guide based on the privacy level (e.g. the program guide may provide certain preferred features or lower prices to users that release private information which can be used in targeted advertising or the like).

Similarly, claim 12 as amended requires a step of executing a program process in response to a privacy level selected by a user.

Claims 1, 8 and 12 were rejected as being anticipated by U.S. Patent Publication 2003/0044165 to Wood. Claims 2 and 11 were rejected as being anticipated by U.S. Patent 6,971,119 to Arsenault. To simplify prosecution, and without agreeing that Wood and Arsenault show the features discussed in the office action, these rejections are traversed in view of the amendments above. Specifically, the features of claims 3, 6, and 9 have been incorporated in these claims, and the features added by amendment are not found in Wood and Arsenault.

Claims 3-4 have been rejected as being obvious over a combination of Arsenault and U.S. Patent 6,898,762 to Ellis. Claims 6-7 have been rejected as being obvious over Arsenault in view of U.S. Patent 6,951,031 to Hatano in further view of Ellis. Claims 9 and 10 have been rejected as being obvious over Wood in view of Ellis. These rejections are traversed.

The Office Action argues that US Patent 6,898,762 to Ellis et al. teaches that the program guide determines whether or not the guide is distributed based on a privacy level set by the user. This is wrong. Ellis et al. does not teach a privacy level setting, and does not teach that this setting can be used to determine distribution (e.g. pricing) of the program guide.

Ellis et al., in col. 18, lines 32-61 referred to in the Office Action, teaches parental controls, which are very different from privacy level settings. Parental controls allow one user (e.g., a parent having an access code or password) to control the access of another user (e.g., a child) to <u>program content</u>. This is very different from a privacy level setting of the present invention. The privacy level setting controls the access <u>of the program guide server</u> to information about the <u>viewing choices</u> of <u>any user</u>. The two concepts are very different. In the present invention, "privacy" refers to preventing or blocking the program <u>server</u> from receiving or monitoring user behavior; it does not refer to parental controls in which one user <u>controls access of another user to program content</u>. The concepts of privacy levels (in the present invention), and parental control (in Ellis et al) can, for example, be combined (thus demonstrating they are directed to two different concepts). In this case, in the present invention, a privacy level could be set to prevent the program guide server from detecting what kinds of channels or TV shows are being blocked. The teaching in Ellis et al. to provide programmable restricted access does not teach or suggest a user-selectable privacy level <u>wherein said electronic program guide preparation server determines whether or not an electronic program guide should be distributed to said program processing apparatus based on a privacy level of information sent thereto from said program processing apparatus.</u>

Also, it is noted that Ellis et al. at cols. 19-20 teaches that the program guide server can record and document "viewing histories of users", and that these viewing histories can be used for targeted advertising and the like. Wholly absent from Ellis et al. is any teaching or suggestion that the user can opt out of such privacy violations. In short, Ellis et al. does not teach or suggest a user-selectable privacy level.

Accordingly, the rejections of claims 3, 4, 6, 7, 9, and 10 were erroneous, and claims 1, 2, 8, 11, and 12 are allowable as amended. The rejection of claim 5 as being obvious over Arsenault in view of U.S. Patent 6,951,031 to Hatano is traversed for the same reason as Hatano does not show the use of an <u>electronic program guide preparation server determining whether or not an electronic program guide should be distributed to said program processing apparatus based on a privacy level of information sent thereto from said program processing apparatus.</u>

Also, claims 1, 2, 5, 8, and 11 as amended require that the privacy level setting must be used by the program guide server to determine whether the program guide should be distributed. Specifically, in the present invention, the high privacy level may result in higher charges for the use of the program guide. Program guide access may be cheaper for users that share private viewing information (see page 65). Ellis et al. does not teach or suggest that privacy level settings can be used for determining program guide distribution (e.g. pricing and availability). Also, none of the other references of record teach that a privacy level can be used to determine the pricing or availability of a program guide. Accordingly, claims 1, 2, 5, 8, and 11 should allowable for this additional reason.

In view of the foregoing, it is respectfully requested that the application be reconsidered, that claims 1-2, 4-5, 7-8, and 10-12 be allowed, and that the application be passed to issue.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview.

A provisional petition is hereby made for any extension of time necessary for the continued pendency during the life of this application. Please charge any fees for such provisional petition and any deficiencies in fees and credit any overpayment of fees for the petition or for entry of this amendment to Attorney's Deposit Account No. 50-2041 (Whitham, Curtis & Christofferson P.C.).

Respectfully submitted,

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